

The complaint

Mr H complained (through a representative) that TM Advances Limited (“TMA”) irresponsibly granted two personal loans in June 2016 and June 2017 that he couldn’t afford to repay.

What happened

In June 2016, Mr H took out a loan with TMA. I didn’t initially have much information about this loan, but TMA later provided information to suggest it was for £2,000, over 24 months, with a monthly payment of £215. It looks as though this loan was repaid in May 2017, just before Mr H took out the second loan in June 2017. This second loan was for £3,000, over 36 months, with a monthly payment of £255.83. With interest, the total amount repayable was £9,209.88 (the amount noted on Mr H’s credit record).

Mr H says he is in financial difficulties, and he doesn’t think TMA carried out reasonable and proportionate checks before granting the loans. He complained to TMA about all this, but TMA said it did not uphold his complaint.

Mr H then brought his complaint to this service. Our investigator looked into it, but as TMA had not provided any information about the loans, or the checks it had carried out, he thought the complaint should be upheld. After several requests, TMA sent in information about the second loan but no information about the first loan. As TMA had otherwise not responded to the investigator’s view, the complaint was passed to me for review.

I issued my first provisional decision in December 2023, explaining why I thought Mr H’s complaint should be upheld. TMA then provided information about the first loan. so I issued a second provisional decision to take account of this new evidence.

Mr H did not respond to my second provisional decision. TMA sent in further information about its affordability calculation, but said it accepted my conclusions as set out in my second provisional decision.

What I’ve decided – and why

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Our approach to considering complaints about unaffordable and irresponsible lending is set out on our website, and I’ve taken this into account here.

I’ve decided to uphold Mr H’s complaint. I’ll explain why.

In summary, before providing credit, lenders need to complete reasonable and proportionate affordability checks. There isn’t a set list of checks required of a lender, but it needs to ensure the checks are proportionate when considering matters such as the type and amount of credit being provided, the size of the regular repayments, the total cost of the credit and the consumer’s circumstances. So I’ve considered whether TMA completed reasonable and proportionate checks to satisfy itself that Mr H would be able to make the repayments on the

loan accounts in a sustainable way.

Mr H sent in a copy of his credit record. As I noted above, TMA initially didn't provide any information about how it had assessed Mr H's circumstances before granting the loans. After several requests, TMA sent in some information about the second loan – copies of the loan agreement, its record of the application and Mr H's credit record at the time. Following the issue of my first provisional decision, TMA sent in information about the first loan – its record of the application and Mr H's credit record at the time. along with its final response letter about Mr H's complaint.

In my second provisional decision I set out my reasoning about both loans as follows (this included the relevant information from the first provisional decision):

"I have considered each loan in turn.

Loan 1 – June 2016

In my earlier provisional decision, I said that TMA had provided no information about the checks it carried out, so I could not say that it carried out reasonable and proportionate checks before granting the loan, or that it was able to confirm that Mr H would be able to make the monthly payments sustainably. So on that basis I was not satisfied that TMA acted fairly in granting this loan and therefore I was proposing to uphold this element of Mr H's complaint.

As I noted above, I now have information from TMA about this loan. TMA said it verified Mr H's income electronically, using credit reference agency current account turnover data, as £3,000 per month. The loan was new borrowing, in that its purpose was not to repay other credit commitments shown on Mr H's credit record.

The final response letter included a summary of the calculations used in assessing the new borrowing, but these figures differ from those on the loan application documents, so I have used the latter in considering this complaint as they date from when the loan was granted. In addition to Mr H's income of £3,000, TMA has included a 'partner contribution' of £375.

There's no information about the reason for this on the loan application documents, although the final response letter refers to 'board to parents' and 'partner pays half'. But the application documents state that Mr H was a private tenant rather than living with family. So it's not clear how this partner contribution was arrived at, or what it actually refers to. So I'm not satisfied it should be taken into account, especially as Mr H's partner was not party to this loan.

Otherwise, the application documents allow for living costs of £900, and car costs of £200 each month. There's no information about whether TMA estimated these figures, (and if so on what basis) or whether they were provided by Mr H.

The application documents show Mr H's monthly payments on his current credit commitments as being £982.50, and those on defaulted credit agreements as being £356. TMA's calculation shows Mr H as having disposable income of £386.50, from which he could make the new loan payments of £215.

The credit reference information shows a County Court Judgment registered in 2011, and five accounts which had defaults registered. I can also see a number of home credit loans taken over the preceding months. TMA had noted on the application documents an explanation for Mr H's financial difficulties, but it did not say whether it had carried out more detailed enquiries about his circumstances, such as reviewing bank statements. In my view

Mr H's credit history ought reasonably to have prompted such enquiries.

I should say here that we requested copies of Mr H's bank statements for the period leading up to the granting of this loan, but so far they have not been provided. However, I'm satisfied that I have enough information on which to base this provisional decision.

Having looked at the figures listed on the loan application documents, I'm not satisfied that Mr H did have enough disposable income to make the repayments on the new loan sustainably.

As I noted above, the information about the 'partner contribution' is not clear, so I think Mr H's income was overstated.

Looking at the outgoings, it seems to me that these are understated. I say this because Mr H had home credit accounts which the credit report shows required weekly payments, whereas TMA has shown the weekly amounts in its calculation as monthly payments. I accept that home credit loans are normally over a short term, but in Mr H's case the loans seem to have already been running for longer than the terms indicated on the credit report, so it's not clear how much longer Mr H would've needed to be making payments.

I also don't have information on how TMA arrived at the payments on the defaulted accounts.

Taking account of what appears to be overstated income, and understated outgoings, it seems to me that Mr H's disposable income would actually have been less than the amount of the monthly payment on the new loan from TMA.

So overall, I'm not satisfied that TMA carried out reasonable and proportionate checks before granting this loan, and based on the evidence I've seen, I think that if TMA had carried out more detailed checks on Mr H's income and outgoings, those checks would've shown that the monthly repayments on the new loan were unlikely to be sustainable. I say this because, taking account of the commitments detailed above, I'm not satisfied that Mr H was left with enough disposable income to manage those repayments sustainably. So I don't think TMA acted fairly in granting this loan to Mr H and therefore I propose to uphold this element of Mr H's complaint.

Loan 2 – June 2017

As I noted above, TMA did provide some information about this loan, although when I issued my earlier provisional decision there was no information about the purpose. In the final response letter that TMA has now provided, the purpose was stated as a holiday, so again this was an increase in overall borrowing rather than a consolidation of other borrowing.

As far as I can tell, this loan was approved based on the information provided by Mr H and drawn from his credit record.

TMA noted Mr H's income as £3,000, and this was listed under 'telephone confirmation'. I've no information about whether TMA verified Mr H's income in some other way, for example through credit reference agency records.

The affordability calculation again shows an item for £375 marked 'partner contribution'. When I issued my earlier provisional decision I had no information about why part of Mr H's partner's income should be considered when the loan was in Mr H's sole name. The recent information refers to it, but the details are inconsistent. So as with the first loan, it's not clear how this partner contribution was arrived at, or what it actually refers to. So I'm not satisfied

it should be taken into account, especially as Mr H's partner was not party to this loan either.

The calculation goes on to list Mr H's existing credit commitments and the payments due on each, but the screenshot does not seem to be complete and so I don't think I have a full list. It's also quite difficult to reconcile the details to the credit reference agency information that TMA sent in from the time of the application.

However I do have the copy of Mr H's credit record that he sent in. Although this was obtained when Mr H submitted the complaint, I can see that in the period between taking the first and second loans from TMA, he also borrowed elsewhere – I can identify several new credit commitments between June 2016 and June 2017. Some of these were payday or home credit loans.

Taking out so many new loans in a short period suggests an over-reliance on credit, and I think ought reasonably to have prompted a more detailed review of Mr H's circumstances. But I've no evidence to suggest that this was done.

Looking at the figures in the affordability calculation, TMA included rent of £550, living costs of £900 and car costs of £200. It's not clear whether these figures were provided by Mr H or estimated by TMA. The figure for payments on existing credit commitments is shown as £1,152.45, and payments on a previously defaulted account as £52.95. Taking all these outgoings from Mr H's stated income of £3,000 leaves £144.60 – less than the monthly payment on the new loan.

There is a note referring to 'settling payments' and a figure of £142. But the recent information states that the purpose of the loan was a holiday rather than any consolidation of borrowing, so this does not lead to any increase in Mr H's disposable income.

As with the first loan, I'm not satisfied that TMA carried out reasonable and proportionate checks before granting this loan, and based on the evidence I've seen, I think that if TMA had carried out more detailed checks on Mr H's income and outgoings, those checks would've shown that the monthly repayments on the new loan were unlikely to be sustainable. I say this because, taking account of the commitments detailed above, I'm not satisfied that Mr H was left with enough disposable income to manage those repayments sustainably. So I don't think TMA acted fairly in granting this loan to Mr H. As a result, I'm proposing to uphold this part of Mr H's complaint also."

As I explained above, Mr H didn't respond to my second provisional decision. TMA provided further details about the 'partner contribution', saying that this was in reference to Mr H's partner paying half of the rent and car costs used in its calculations. TMA further said that it otherwise disregarded Mr H's partner's income and contribution to household expenses. However, TMA went on to say that it accepted that it had taken weekly payments on Mr H's other credit commitments as being payable monthly, and that this would have caused affordability problems.

Mr H had taken further home credit loans between taking the first and second loans with TMA, so I think it's most likely that TMA's systems had shown weekly payments on those as being monthly payments in the affordability calculations for the second loan as well as the first. Because of this, the further information TMA provided is not sufficient to change my conclusions. And in any case TMA has accepted my conclusions as set out in my second provisional decision.

In summary, I'm not satisfied that TMA acted fairly in granting either loan, so I've decided to uphold Mr H's complaint about both loans.

Putting things right

I think it's fair and reasonable for Mr H to repay the capital that he borrowed in June 2016 and June 2017 because he has had the benefit of that money. But he has paid interest and charges on loans that shouldn't have been provided to him. TMA must put this right.

It should:

- Remove all interest, fees and charges applied to both loans from the outset. The payments Mr H has made should be deducted from the new starting balance – the total of the two capital amounts originally lent. If, once all adjustments have been made, this shows that Mr H has made overpayments leading to a credit balance, these overpayments should be refunded to Mr H, together with interest at 8% simple a year* from the date they were made to the date of settlement.
- if, once all adjustments have been made this shows that Mr H still has an outstanding amount to repay, TMA should contact Mr H to arrange a suitable repayment plan.
- TMA should remove any adverse information (if any) it has so far recorded on Mr H's credit file in relation to the two loans.

*HM Revenue & Customs requires TMA to deduct tax from any award of interest. TMA must give Mr H a certificate showing how much tax has been taken off if he asks for one.

My final decision

For the reasons set out above, I have decided to uphold Mr H's complaint and to require TM Advances Limited to compensate Mr H as described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 September 2024.

Jan Ferrari
Ombudsman